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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Mark PETERS	:	Confirmation Number: 6950
	:	
Application No.: 10/758,853	:	Group Art Unit: 3692
	:	
Filed: January 16, 2004	:	Examiner: B. Fields
	:	
For: SERVER WALLET PROVIDER PORTAL	:	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed April 22, 2008, wherein Appellant appeals from the Examiner's rejection of claims 1-7, 9-13, and 15-18.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on January 16, 2004, at Reel 014905, Frame 0225.

II. RELATED APPEALS AND INTERFERENCES

An Appeal has been filed in related U.S. Patent Application No. 10/675,503 (hereinafter the '503 application).

III. STATUS OF CLAIMS

Claims 1-7, 9-13, and 15-18 are pending and two-times rejected in this Application. Claims 8 and 14 have been cancelled. It is from the multiple rejections of claims 1-7, 9-13, and 15-18 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Second and Final Office Action dated January 22, 2008 (hereinafter the Second Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 4 and also to independent claim 1, a mobile server wallet provider (MSWP) portal 400 is disclosed. The MSWP portal 400 is configured to communicatively couple both to a plurality of MSWPs 430 and also a content proxy 440 (lines 1-3 of paragraph [0028]; lines 1-2 of paragraph [0029]). The MSWP portal 400 includes a composite profile generator configured to combine a plurality of MSWP profiles 480 into a single, composite profile 460 for routing payment messages 490 in the proxy 440 to the MSWP portal 400 (lines 5-9 of paragraph [0029]). The MSWP portal 400 includes selection logic configured to process a user selection of one of the MSWPs 430 to process a payment transaction received through the proxy 440 (lines 3-5 of paragraph [0030]).

Referring to Figure 4 and also to independent claim 4, a payment transaction system is disclosed. The payment transaction system includes a plurality of mobile server wallet providers (MSWPs) 430, at least one content proxy 440, and at least one MSWP portal 400. The plurality of mobile server wallet providers (MSWPs) 430 are coupled to respective on-line financial

institutions 420 (lines 1-3 of paragraph [0029]). The at least one content proxy 440 is configured to couple both to on-line merchants 450 and to end user customers 410 of the on-line merchants 450 (lines 2-4 of paragraph [0028]). The at least one MSWP portal 400 is disposed between the MSWPs 430 and the at least one content proxy 440 (lines 1-3 of paragraph [0028]; lines 1-2 of paragraph [0029]).

Referring to Figure 5 and also to independent claim 7, a method for processing a payment transaction in a mobile commerce system is disclosed. In block 540, a payment message is processed in a portal to identify one of a selection of mobile server wallet providers (MSWPs) to handle an associated payment transaction (lines 3-8 of paragraph [0032]). In block 550, the payment message is routed to an identified one of the MSWPs (lines 1-2 of paragraph [0033]). In block 505, individual MSWP profiles are combined for each of the MSWPs into a composite profile, and the composite profile is provided to a content proxy for use in trapping payment messages passing through the content proxy between an on-line merchant and a customer in the mobile commerce system (lines 3-8 of paragraph [0031]).

Referring to Figure 5 and also to independent claim 13, a machine readable storage having stored thereon a computer program for processing a payment transaction in a mobile commerce system is disclosed. The computer program comprises a routine set of instructions which when executed by the machine cause the machine to perform the following steps In block 540, a payment message is processed in a portal to identify one of a selection of mobile server wallet providers (MSWPs) to handle an associated payment transaction (lines 3-8 of paragraph [0032]). In block 550, the payment message is routed to an identified one of the MSWPs (lines 1-2 of paragraph [0033]). In block 505, individual MSWP profiles are combined for each of the MSWPs into a composite profile, and the composite profile is provided to a content proxy for

- 1 use in trapping payment messages passing through the content proxy between an on-line
- 2 merchant and a customer in the mobile commerce system (lines 3-8 of paragraph [0031]).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-7, 9-13, and 15-18 were rejected under 35 U.S.C. § 102 for anticipation based upon Suzuki et al., U.S. Patent Publication No. 2002/0032616 (hereinafter Suzuki).

VII. ARGUMENT

**THE REJECTION OF CLAIMS 1-7, 9-13, AND 15-18 UNDER 35 U.S.C. § 102 FOR
ANTICIPATION BASED UPON SUZUKI**

For convenience of the Honorable Board in addressing the rejections, claims 2, 5, 7, 9-13, and 15-18 stand or fall together with independent claim 1, and claim 6 stands or falls together with claim 3, and claim 4 stands or falls alone.

As is evident from Appellant's previously-presented comments during prosecution of the present Application and from Appellant's comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single

reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not been met.

Claim 1

On pages 8 and 9 of the First Response dated November 15, 2007 (hereinafter the First Response), Appellant presented the following arguments. At the outset, Appellant notes that the Examiner's written analysis with regard to claim 1 has been little assistance to Appellant in understanding the basis for the Examiner's rejection. For example, the Examiner refers to "[server]" as identically disclosing the claimed content proxy. However, Figs. 3 and 4 of Suzuki describe four different servers. Appellant is not in a position to guess as to what "server" in Suzuki the Examiner is referring to identically disclose the claimed content proxy.

Appellant also notes that the Examiner's analysis relies on generalizations and ignores the specific language of the claims. Appellant also notes that the Examiner's cited passages of

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Figures 3-4 and 6-7 as well as paragraphs [0020]-[0023] and [0030] describe what Appellant has already admitted is prior art (i.e., see Fig. 1 of Appellant's specification).

As claimed, the MSWP portal is connected to a plurality of MSWPs and a content proxy. Figs. 3-4 and 6-7 of Suzuki do not teach a plurality of MSWPs. Instead, these figures only refer to a single wallet server. Moreover, these figures within Suzuki are also silent as to a MSWP portal between the plurality of MSWPs and a content proxy. Instead, these figures show a relay server (presumably allegedly corresponding to the claimed content proxy).

The only discussion, within the Examiner's cited passages, of multiple wallet servers is found in paragraph [0030], which is reproduced below:

Also, a preferable mode is one wherein the payment system is provided with a plurality of the wallet servers, and the information out of which the predetermined item is to be selected by the contents converting section is information used by the user to select the wallet server for the payment out of the plurality of the wallet servers.

Completely absent from this passage, however, is a detailed discussion of how the multiple wallet servers are integrated into the system. On the contrary, claim 1 recites that "a composite profile generator configured to combine a plurality of MSWP profiles into a single, composite profile for routing payment messages in said proxy to the MSWP profile." Absent from the Examiner's cited passages is either a profile for each of the MSWPs or a single, composite profile. Thus, the Examiner has failed to establish that Suzuki identically discloses the claimed invention, as recited in claim 1, within the meaning of 35 U.S.C. § 102.

Examiner's Response

The Examiner's sole response to the above-reproduced arguments is found on page 8 of the Second Office Action in which the Examiner asserted the following:

The Examiner respectfully disagrees. The Examiner has pointed to Figures 3-4 and 6-7 to show Suzuki's disclosure of a Wallet Server in figures. As the instant application is primarily directed towards wallet servers, the Examiner felt no need to specifically pin point a wallet server in the original office action. The Examiner's attention to such detail was remiss and has in effect been corrected. Conventional use of a non-mobile or mobile wallet server causes a composite profile to be created for quicker usability upon each successive iteration. (emphasis in original)

The Examiner's response not only does not respond to all of the previously-presented arguments, the Examiner's response raises more questions than it answers.

Claim 1 recites that the MSWP portal is coupled to a plurality of MSWPs and a content proxy. Thus, these claimed features represent three separate entities. The Examiner is now asserting that the "Wallet Server" illustrated in Figures 3-4 and 6-7 identically discloses the claimed content proxy. The questions this assertion raises regards what features within Suzuki the Examiner is now alleging corresponding to the claimed MSWP portal and the plurality of MSWPs. Upon reviewing the Examiner's cited passages, Appellant is unclear as to what features the Examiner is asserting identically discloses the claimed MSWP portal and the plurality of MSWPs.

Also, as already noted above, the Examiner only addressed one of the arguments previously presented in the First Response. Appellant is still maintaining these arguments that the Examiner has failed to address. Therefore, for the reasons presented above, the Examiner has failed to establish that Suzuki identically discloses the claimed invention, as recited in claim 1, within the meaning of 35 U.S.C. § 102.

Claim 4

On page 9 of the First Response, Appellant presented the following arguments. Independent claim 4 is also directed to the concept of a MSWP portal that is connected to a plurality of MSWPs and a content proxy. However, as noted above with regard to claim 1, the Examiner has failed to specifically identify a teaching in Suzuki that identically discloses the claimed MSWP portal. Thus, the Examiner has failed to establish that Suzuki identically discloses the claimed invention, as recited in claim 4, within the meaning of 35 U.S.C. § 102.

Examiner's Response

The Examiner's sole response to the above-reproduced arguments is found in the paragraph spanning pages 8 and 9 of the Second Office Action in which the Examiner asserted the following:

The Examiner respectfully disagrees. The Examiner notes: Conventional Wallet Servers, etc. comprise a single entity that operates between a merchant and a customer. This 'single entity' usually/essentially is found in the middle of the merchant and the consumer and is used by both. The consumer communicates with the wallet, and the wallet, in turns, communicates with the merchant through the merchant's website. In effect, this entity can be compared to as a portal in order to achieve successful system interoperability as disclosed; henceforth a portal is implicitly taught in Suzuki. (emphasis added)

Appellant respectfully submits that the Examiner's analysis is flawed.

As noted above, claim 4 is directed to the concept of a MSWP portal that is connected to a plurality of MSWPs and a content proxy. The Examiner's analysis, however, only addresses the content proxy (i.e., allegedly disclosed by the Wallet Server). However, the Examiner has failed to identify both the plurality of MSWPs and the MSWP portal.

The Examiner's assertion that the "portal is implicitly taught by Suzuki" is a factually unsupported inherency argument. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency.⁴ To establish inherency, the extrinsic evidence must make clear that the missing element must necessarily be present in the thing described in the reference, and that the necessity of the feature's presence would be so recognized by persons of ordinary skill.⁵ Furthermore, reference is made to ex parte Schricker,⁶ in which the Honorable Board of Patent Appeals and Interferences stated the following:

However, when an examiner relies on inherency, it is incumbent on the examiner to point to the "page and line" of the prior art which justifies an inherency theory. Compare, In re Rijckaert, 9 F.3d 1531, 1533, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (when the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the prior art); In re Yates, 663 F.2d 1054, 107, 211 USPQ 1149, 1151 (CCPA 1981).

The Examiner did not discharge that burden of indicating where such a teaching appears in the prior art. Thus, the Examiner has not established that this limitation is inherently disclosed by Suzuki.

Claims 3 and 6

On pages 9 and 10 of the First Response, Appellant presented the following arguments. Each of claims 3 and 6 are directed to the concept of a filter plug-in configured to route payment messages to the portal when the payment messages match rules specified within the composite

⁴ In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).

⁵ Finnegan Corp. v. ITC, 180 F.3d 1354, 51 USPQ2d 1001 (Fed. Cir. 1999); In re Robertson, 169 F.3d 743, 745 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); Continental Can Co. USA v. Monsanto Co., 20 USPQ 2d 1746 (Fed. Cir. 1991); Ex parte Levy, 17 USPQ2d 1461 (BPAI 1990).

⁶ 56 USPQ2d 1723, 1725 (BPAI 2000).

profile. With regard to these limitations, the Examiner cited paragraphs [0028]-[0029] and [0033]-[0038] of Suzuki and stated "[a]fter authentication takes place within the network, payment receipt messages are routed back and forth through the system." Completely absent from these passages, however, is a teaching as to a filter plug-in or "rules specified within the composite profile." Thus, the Examiner has failed to establish that Suzuki identically discloses the claimed invention, as recited in claims 3 and 6, within the meaning of 35 U.S.C. § 102.

Examiner's Response

The Examiner's sole response to the above-reproduced arguments is found in the paragraph spanning pages 9 and 10 of the Second Office Action in which the Examiner asserted the following:

The Examiner respectfully disagrees. It is commonly known to a person of ordinary skill in the art that a filter is involved in an initiation of an electronic payment transaction, a communication terminal of a customer, or a transaction server. A filter serves as a primary part of the communication system; the communication system allows a communication between the server of the merchant, the communication terminal and the transaction server. The filter, has, among others, the task of forwarding certain messages concerning the electronic payment transaction to assigned receivers. Filters can be a part of a communication system, such as a GSM, GPRS, PPDC, WCDMA, UMTS, Bluetooth type networks, etc. by way of example. In addition, the filter allows among others, that certain messages be redirected to the transaction server for the communication terminal.

Appellant is unclear as to whether or not the Examiner is making an obviousness rejection or yet another factually unsupported inherency argument. In either instance, the Examiner has failed to set forth any substantial evidence needed for establishing either obviousness or inherency.

Claims 7 and 13

On page 10 of the First Response, Appellant presented the following arguments. Claims 7 and 13 have been amended to respectively include the limitations previously presented in claims 8 and 14, which were directed to the concept of combining individual MSWP profiles for

each of the MSWPs into a composite profile. As already noted within regard to claim 1, these limitations are not identically disclosed by Suzuki. Thus, the Examiner has failed to establish that Suzuki identically discloses the claimed invention, as recited in claims 7 and 13, within the meaning of 35 U.S.C. § 102.

Examiner's Response

The Examiner did not directly respond these arguments as to claims 7 and 13 or respond to prior arguments regarding similar limitations found in claim 1.

Claims 2, 5, 9-12, and 15-18

With regard to claims 2, 5, 9-12, and 15-18, the Examiner engages in a considerable regarding "Official Notice" and as to how Appellant's traversal of the Examiner's Official Notice was inadequate. Interestingly, however, the Examiner never took Official Notice of any of the limitations recited in claims 2, 5, 9-12, and 15-18. Moreover, Appellant did not traverse the Examiner's Official Notice since the Official Notice was not made.

On page 13 of the Second Office Action, the Examiner asserted that "Claims 2, 5, 9-12, and 15-18 are taken to be admitted prior art because Applicant's traversal was inadequate" (emphasis in original). Appellant disagreed. The fact that Appellant did not traverse the Examiner's initial rejection is not dispositive as to whether Appellant agrees or disagrees that the limitations added by claims 2, 5, 9-12, and 15-18 are identically disclosed by Suzuki. Appellant determined that the Examiner's rejection as to independent claims 1, 5, 7 and 13 to be so deficient that an analysis of the Examiner's rejection as to the dependent claims was unnecessary.

1
2 The Examiner's assertion on page 13 that "Applicant's challenge is not timely" would be
3 incorrect even if Appellant did traverse the Examiner's non-existent taking of Official Notice. If
4 Appellant did challenge, the challenge would have occurred during the First Amendment, which
5 would have been the first time Appellant had the opportunity to make such a challenge.
6

7 In most instances, Appellant would have treated the Examiner's comments on pages 12
8 and 13 as an artifact from a prior Office Action used as a template for the present Office Action,
9 which the Examiner inadvertently failed to delete. However, for the Examiner to update these
10 comments with the claims not addressed by Appellant and the dates of the First Office Action
11 and the First Amendment reflects the Examiner's intent that these comments apply to the present
12 application. Given the complete inappropriateness of the Examiner's assertions as to the present
13 application and the Examiner's failure to address many of Appellant's previously presented
14 arguments, Appellant respectfully submits that substantial flaws are present throughout the
15 Examiner's rejection.
16

17 Conclusion

18 Based upon the foregoing, Appellant respectfully submits that the Examiner's rejection
19 under 35 U.S.C. § 102 based upon the applied prior art is not viable. Appellant, therefore,
20 respectfully solicits the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 102.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: June 23, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. A mobile server wallet provider (MSWP) portal comprising:

a configuration for communicative coupling both to a plurality of MSWPs and also a content proxy;

a composite profile generator configured to combine a plurality of MSWP profiles into a single, composite profile for routing payment messages in said proxy to the MSWP portal; and,

selection logic configured to process a user selection of one of said MSWPs to process a payment transaction received through said proxy.

2. The portal of claim 1, wherein said content proxy is a wireless service proxy (WSP).

3. The portal of claim 2, wherein said WSP further comprises a filter plug-in configured to route said payment messages to the portal when said payment messages match rules specified within said composite profile.

4. A payment transaction system comprising:

a plurality of mobile server wallet providers (MSWPs) coupled to respective on-line financial institutions;

at least one content proxy configured for coupling both to on-line merchants and to end user customers of said on-line merchants; and,

at least one MSWP portal disposed between said MSWPs and said at least one content proxy.

5. The system of claim 4, wherein said content proxy comprises a wireless service proxy (WSP).

6. The system of claim 4, wherein said content proxy further comprises a filter plug-in configured to route payment messages to said MSWP portal when said payment messages match rules specified within a profile provided to said filter plug-in by said MSWP portal.

7. A method for processing a payment transaction in a mobile commerce system, the method comprising the steps of:

processing a payment message in a portal to identify one of a selection of mobile server wallet providers (MSWPs) to handle an associated payment transaction;

routing said payment message to said payment message to an identified one of said MSWPs;

combining individual MSWP profiles for each of said MSWPs into a composite profile; and,

providing said composite profile to a content proxy for use in trapping payment messages passing through said content proxy between an on-line merchant and a customer in the mobile commerce system.

9. The method of claim 7, wherein said processing step comprises the steps of:

identifying a customer associated with said payment message;

parsing a profile associated with said customer to determine a selection a preferred MSWPs;

rendering a user interface presenting said selection of preferred MSWPs to said customer;
and,

selecting a particular one of said preferred MSWPs to handle said associated payment transaction based upon data provided by said customer in said user interface.

10. The method of claim 9, further comprising the step of relaying payment transaction data produced by said selected one of said preferred MSWPs to said customer.

11. The method of claim 9, further comprising the step of relaying payment transaction data produced by said selected one of said preferred MSWPs to a merchant associated with said payment transaction.

12. The method of claim 11, wherein said relaying step comprises the step of relaying a payment guarantee to said merchant by said selected one of said preferred MSWPs.

13. A machine readable storage having stored thereon a computer program for processing a payment transaction in a mobile commerce system, the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

processing a payment message in a portal to identify one of a selection of mobile server wallet providers (MSWPs) to handle an associated payment transaction;

routing said payment message to said payment message to an identified one of said MSWPs;

combining individual MSWP profiles for each of said MSWPs into a composite profile;
and,

providing said composite profile to a content proxy for use in trapping payment messages passing through said content proxy between an on-line merchant and a customer in the mobile commerce system.

15. The machine readable storage of claim 13, wherein said processing step comprises the steps of:

identifying a customer associated with said payment message;

parsing a profile associated with said customer to determine a selection a preferred MSWPs;

rendering a user interface presenting said selection of preferred MSWPs to said customer;
and,

selecting a particular one of said preferred MSWPs to handle said associated payment transaction based upon data provided by said customer in said user interface.

16. The machine readable storage of claim 15, further comprising the step of relaying payment transaction data produced by said selected one of said preferred MSWPs to said customer.

17. The machine readable storage of claim 15, further comprising the step of relaying payment transaction data produced by said selected one of said preferred MSWPs to a merchant associated with said payment transaction.

18. The machine readable storage of claim 17, wherein said relaying step comprises the step of relaying a payment guarantee to said merchant by said selected one of said preferred MSWPs.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Although an Appeal has been filed in related U.S. Patent Application No. 10/675,503, Appellant is unaware of decision rendered by the Board in that matter.